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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 THE BANK OF NEW YORK MELLON,
10 successor in interest to JP Morgan Chase
11 Bank, as Trustee for the Registered Holders
12 of Novastar Mortgage Funding Trust, Series
2004-3 Novastar home equity loan asset-
backed certificates, Series 2004-3,

13 Plaintiff,

14 vs.

15
16 TONY COLLIN HOOK; EMILY ANN
17 HOOK; LESLIE DIANTONIO; and DOES 1
through 5, inclusive,

18 Defendants.
19

CASE NO. 12cv793 - IEG (DHB)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*;
AND**

[Doc. No. 2]

**(2) REMANDING ACTION TO
STATE COURT**

20 On April 2, 2012, Defendant Leslie Diantonio (“Diantonio”) removed an unlawful detainer
21 action from state superior court to this Court on the basis of federal question jurisdiction pursuant
22 to 28 U.S.C. §§ 1331, 1441(a). [Doc. No. 1, Notice of Removal.] Along with her notice of
23 removal, Defendant Diantonio submitted a motion to proceed *in forma pauperis* (“IFP”). [Doc.
24 No. 2.] For the reasons below, the Court **GRANTS** Diantonio’s motion to proceed IFP, but
25 **REMANDS** the action back to state court for lack of subject matter jurisdiction.

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DISCUSSION

I. MOTION TO PROCEED *IN FORMA PAUPERIS*

All parties instituting any civil action, suit, or proceeding in a district court whether by original process, removal or otherwise, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). However, an action may proceed despite failure to pay the filing fee if the party is granted *in forma pauperis* (“IFP”) status. See Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999). The Court may grant IFP status to any party who demonstrates that he or she is unable to pay such fees or give security therefor. 28 U.S.C. § 1915(a).

In the present case, having reviewed Defendant Diantonio’s motion and declaration in support of the motion, the Court finds that Diantonio has made a sufficient showing of inability to pay the required filing fees. See Rodriguez, 169 F.3d at 1177. Accordingly, good cause appearing, the Court **GRANTS** Defendant Diantonio leave to proceed *in forma pauperis*.

II. INITIAL SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)

After granting IFP status, the Court must dismiss the case if the complaint “fails to state a claim on which relief may be granted” or is “frivolous.” 28 U.S.C. § 1915(e)(2)(B); see also Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to *sua sponte* dismiss an *in forma pauperis* complaint that fails to state a claim).

A. Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). A defendant may remove a civil action from state court to federal court only if the district court could have original jurisdiction over the matter. 28 U.S.C. § 1441(a). “Removal statutes are strictly construed against removal.” Luther v. Countrywide Home Loans Servicing, LP, 533 F.3d 1031, 1034 (9th Cir. 2008). There is a “strong presumption” against removal jurisdiction, and the party seeking removal always has the burden of establishing that removal is proper. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). If there is any doubt as

1 to the propriety of removal, federal jurisdiction must be rejected. Id. at 567. If at any time before
 2 the entry of final judgment it appears that the Court lacks subject matter jurisdiction over a case
 3 removed from state court, it must remand the action to state court. See 28 U.S.C. § 1447(c); Int'l
 4 Primate Prot. League v. Adm'rs of Tulane Educ. Fund, 500 U.S. 72, 87 (1991).

5 Defendant Diantonio's notice of removal alleges that this court has federal question
 6 jurisdiction over the action pursuant to 28 U.S.C. § 1331. [Notice of Removal ¶¶ 5-14.] Under 28
 7 U.S.C. § 1331, this Court has original jurisdiction over civil actions "arising under" federal law.
 8 Removal based on § 1331 is governed by the "well-pleaded complaint" rule. Caterpillar, Inc. v.
 9 Williams, 482 U.S. 386, 392 (1987). Under the rule, "federal jurisdiction exists only when a
 10 federal question is presented on the face of plaintiff's properly pleaded complaint." Id. Therefore,
 11 there is no federal question jurisdiction simply because there is a federal defense to the claim. Id.

12 A review of the complaint shows that Plaintiff is only bringing a cause of action against the
 13 Defendants for unlawful detainer pursuant to California Code of Civil Procedure § 1161a. [Doc.
 14 No. 1, Compl.] This is a purely state law cause of action, and the Court does not have federal
 15 question jurisdiction over the matter based on this claim. See Southland Homes Real Estate & Inv.,
 16 LLC v. Lam, 2011 U.S. Dist. LEXIS 25472, at *3 (C.D. Cal. Feb. 25, 2011); Galileo Fin. v. Park,
 17 2009 U.S. Dist. LEXIS 94996, at *1-2 (C.D. Cal. Sept. 24, 2009) ("Here, the complaint only asserts
 18 a claim for unlawful detainer, a cause of action that is purely a matter of state law. Thus, from the
 19 face of the complaint, it is clear that no basis for federal question jurisdiction exists."). In the
 20 notice of removal, Defendant Diantonio asserts that federal question exists based on the Protecting
 21 Tenants at Foreclosure Act ("PTFA"). [Doc. No. 1, Notice of Removal ¶ 6.] However, the face of
 22 the complaint shows that Plaintiff is not bringing a cause of action under the PTFA and is only
 23 bringing a cause of action for unlawful detainer. [See Doc No. 1, Compl.] Based on the allegations
 24 in the notice of removal, Defendant at most can raise the PTFA as a defense to Plaintiff's unlawful
 25 detainer action. However, a federal defense by itself is insufficient to establish federal question
 26 jurisdiction. See Caterpillar, 482 U.S. at 392; Fannie Mae v. Brooks, 2012 U.S. Dist. LEXIS
 27 30627, at *9-10 (C.D. Cal. Mar. 7, 2012) (rejecting defendant's contention that a defense under the
 28 PTFA is sufficient to establish federal question jurisdiction and remanding the action for lack of

1 jurisdiction).

2 In addition, the face of the complaint clearly shows that this Court also does not possess
3 diversity jurisdiction over the matter. For a federal court to exercise diversity jurisdiction, there
4 must be “complete diversity” between the parties and the amount in controversy requirement of
5 \$75,000 must be met. See 28 U.S.C. § 1332(a); Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 267
6 (1806). “[W]hen a state-court complaint affirmatively alleges that the amount in controversy is less
7 than the jurisdictional threshold, the ‘party seeking removal must prove with legal certainty that
8 [the] jurisdictional amount is met.’” Guglielmino v. McKee Foods Corp., 506 F.3d 696, 699 (9th
9 Cir. 2007).

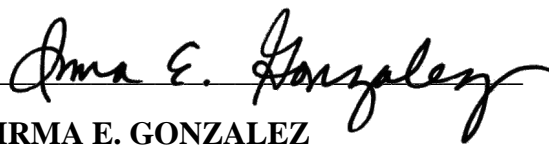
10 The complaint states that Plaintiff is seeking under \$10,000 in damages, [Doc. No. 1,
11 Compl.], but Defendant has made no attempt in her notice of removal to prove with a legal certainty
12 that the amount in controversy is over \$75,000. Therefore, Defendant has not met her burden of
13 establishing that this Court has diversity jurisdiction, see Guglielmino, 506 F.3d at 699, and
14 diversity jurisdiction is lacking. See, e.g., Southland Homes, 2011 U.S. Dist. LEXIS 25472, at *3
15 (remanding unlawful detainer action where plaintiff’s complaint stated that the damages sought
16 were less than \$10,000). Accordingly, the Court lacks subject matter jurisdiction over this action.

17 CONCLUSION

18 For the reasons above, the Court **GRANTS** Defendant Diantonio’s motion to proceed IFP,
19 but **REMANDS** the action back to state court for lack of subject matter jurisdiction.

20 **IT IS SO ORDERED.**

21 **DATED:** April 6, 2012

22 
23 **IRMA E. GONZALEZ**
24 **United States District Judge**